

COUNTY OF SAN DIEGO
RESPONSE TO 2009/10 GRAND JURY REPORT
“Eye Gnats in San Diego County”
Issued May 13, 2010

Finding 01: There is a negative impact on the quality of life for persons and animals living in areas of eye gnat infestation.

Response: We agree with this finding. Based on the complaints from the residents of Jacumba they have been negatively affected by eye gnats.

Finding 02: Efforts by the County of San Diego to address eye gnat infestation have not reduced the number of complaints or the severity of the eye gnat infestation as described by residents in the impacted areas.

Response: We partially agree with this finding. The research conducted by the University of California Cooperative Extension in 2008 and 2009 and actions by the farmer resulted in reduced levels of eye gnats on the farm and in the community, but levels in the community were still causing complaints. Efforts are being undertaken in 2010 to implement new measures to reduce eye gnat populations. There is not a good record of complaints made by Jacumba residents in the past but a record of all complaints communicated to Vector Control is being maintained.

Finding 03: The County of San Diego has the ability and authority, through existing County regulatory codes, to increase the focus and effectiveness of efforts to control the eye gnat problem.

Response: We agree with this finding. Since 2008 research has been conducted on eye gnat breeding and control and in 2010 the owner of Bornt Farms agreed to comply with an Eye Gnat Nuisance Prevention Plan (Plan). The Department of Environmental Health and the University of California Cooperative Extension are monitoring compliance with the Plan and its impact on eye gnat populations. County Counsel is also monitoring the situation. While the focus of efforts has increased the effectiveness of those efforts are still being studied.

The 2009/2010 San Diego County Grand Jury recommends that the Chief Administrative Officer of San Diego County direct that:

Recommendation 10-20: The Director of Environmental Health includes and designates the eye gnat a priority in the efforts of the Community Health Division's Vector Control Program.

Response: This recommendation has been implemented. In 2008, the Department of Environmental Health and the Department of Agriculture, Weights and Measures requested that the Farm Home Advisor's Office through the University of California Cooperative Extension conduct research to find solutions to the eye gnat problem with the primary focus in Jacumba. The study was funded by the Department of Environmental Health and Mr. Bornt, owner of the Bornt Farm in Jacumba. The University of California Cooperative Extension studied the eye

gnat problem during 2008 and produced the attached report entitled *Final Report San Diego County Eye Gnat Research and Education Project 2008* (herein referred to as the 2008 Report).

In 2009, staff from the University of California Cooperative Extension staff continued to monitor eye gnat populations and it was clear from the 2009 data that in every measure, the number of eye gnats in the traps was reduced. Therefore, the measures that were taken in 2009 and 2010 and recommended from the results of the research conducted in 2008 (barriers, trapping, cultural, etc.) may have an impact on the population of the eye gnats. The 2009 report of those findings is now available online. Regardless the eye gnat population is still a nuisance based on citizen complaints. It must be made clear that regardless of the level of management or manipulation, eye gnats are endemic to the general area and will always exist at some level in the environment.

The 2008 Report and 2009 summary data contain recommendations for Bornt Farm and additional research needs. The Department of Environmental Health included some of these recommendations and research needs in an Eye Gnat Nuisance Prevention Plan (Plan) which is a plan for Bornt Farm to follow in their further efforts to reduce eye gnat populations. After negotiations with the County Mr. Bornt agreed to most of the conditions in the Plan and signed it on February 4, 2010. During 2010, Department of Environmental Health's Vector Control Program staff are verifying conformance with the Plan and are in direct communication with the farmer. University of California Cooperative Extension staff is evaluating the effectiveness of the efforts by determining the eye gnat levels found in traps. The eye gnat study and weekly inspection reports are available on the County's Vector Control Program's Website at http://www.sdcounty.ca.gov/deh/pests/eye_gnats.html. Jacumba residents can call in their complaints at (858) 694-2629 or email them to vector@sdcounty.ca.gov. It is expected that the UC Cooperative Extension may make additional recommendations or adjustments to the Plan and Vector Control staff will seek Mr. Bornt's agreement. Vector Control will consult with the UC Cooperative Extension on clarifying Plan requirements that are unclear or require further definition. Examples of changes to the Plan and approach include changing Vector Control's inspection frequency, including weather data on eye gnat collection reports and creating a plot or block plan and posting it online so residents can understand the different locations on the farm when reviewing inspection reports.

Recommendation 10-21: The Director of the Department of Environmental Health assures that the Vector Control Program specifically require facilities that may generate an eye gnat infestation include the vector abatement protocols as an element in the use permit process, if one is required, and for any other location, regardless of the need for a permit.

Response: The first part of this recommendation, to include vector abatement protocols as an element of a use permit, will not be implemented. The second part of this recommendation, to include vector abatement protocols regardless of the need for a permit, requires further study. In the unincorporated areas of the County permits for agricultural crop production are not required. If eye gnat problems are found within incorporated cities which issue a use permit for agricultural crop production the Department of Environmental Health will communicate vector abatement protocols for possible inclusion in their permit, but the County cannot require cities to include such requirements in their permits. The Department of

Environmental Health is therefore not positioned to use permit conditions to require facilities to comply with eye gnat control abatement protocols.

Any cultivated, organically enriched and moist soil may encourage these native flies to breed. Many properties in the rural unincorporated areas of the County are large and the uses are quite varied. These uses range from flowerbeds and residential or community gardens to rich natural ground and commercial farming operations. It is not feasible to precondition all land use to avoid the incidental development of this gnat's habitat. It should also be noted that the State has adopted a Right to Farm Act, which protects existing agriculture operations against nuisance abatement lawsuits in some circumstances, but there are exceptions to this act that may be applicable in the case of Jacumba.

If the research reveals control measures that are effective at reducing eye gnat populations those control measures could be included in a control program for other similar operations. Such a program could rely on voluntary implementation of proven measures or on a regulatory process. Both education-based and regulatory programs have been traditional approaches to changing farming practices. Any proposed regulatory program would need the approval of the Board of Supervisors.

Much has been learned about this gnat and the control methods that mitigate gnat populations. The County agencies will continue to use these and other tactics as developed by the University of California Cooperative Extension.

Recommendation 10-22: The Director of Environmental Health directs the Vector Control Program to require the owners of such facilities to notify the residents impacted by any eye gnat infestation as well as any corrective actions to be taken.

Response: The recommendation requires further analysis. Causative agents and remedial actions for eye gnat problems are still being researched however much has already been learned about eye gnats from the Jacumba Study. Those controls that have been determined to be effective in Jacumba may be used in other parts of the county that are experiencing the same problems. . Part of that consideration would be notification of residents affected by an eye gnat infestation.

Recommendation 10-23: The Director of Agriculture, Weights and Measures requires that all existing, newly established or proposed, and closed or discontinued agricultural developments, control and correct any source of vector harborage or breeding impacting the community at large.

Response: This recommendation will not be implemented. Vector control operations are delegated to the Department of Environmental Health. The Agricultural Commissioner does not have the authority to control and correct sources of vector harborage or breeding. Although the Agricultural Commissioner does enforce the laws relating to the prevention of the introduction or the spread of "pests", the term "pest" includes only diseases, plants or animal life that is dangerous or detrimental to the agricultural industry. This authority does not include pests that affect the community at large. [Food and Agricultural Code Sections 5101 & 5006].

As has been stated above, the Department of Environmental Health will continue its efforts to research causative agents and remedial actions for eye gnat problems. If prevention methods are determined, the Department of Environmental Health will consider implementing regulatory measures to control and correct eye gnat breeding.

San Diego Board of Supervisors meeting

August 3, 2010

Comments on: "COUNTY OF SAN DIEGO RESPONSE TO 2009/10 GRAND JURY REPORT
Eye Gnats in San Diego County, Issued May 13, 2010"

From: Bill Pape, Jacumba Against Gnats, 619-766-4927

On July 13th 2010, after the last Board of Supervisors meeting, Mr. Jack Miller sent the County response to Neil Hamada after he had made a few additional edits and stated "Please make the changes you would like to see in the Response."

We spent substantial time researching County and State regulations and provided many comments and changes to the letter in order to more accurately describe the county's responsibilities. Most of the changes have now been removed and we were told that it was because they were specific to Jacumba and did not address the rest of San Diego County. I would like to remind the County that the Grand Jury investigation occurred due to the infestation in Jacumba. Jacumba is within San Diego County's jurisdiction and the Department of Environmental Health (DEH) has the responsibility to take action and enforce the law no matter how politically incorrect or difficult it may seem. As public servants overseeing the DEH, please help the daily suffering of the residents in Jacumba from eye gnats.

At this time I'd like to point out some of the differences and omissions in the letter submitted to you today verses the draft letter we submitted back to Mr. Miller.

1. The following statements were omitted from the "Facts and Findings" section,
 - a. "Through a study conducted through cooperation with James Bethke and the University of California Cooperative Extension, it has been proven that Bornt Farms is producing abnormally high eye gnat populations negatively impacting the lives of the residents in Jacumba."
 - b. "Eye gnats meet the definition of a vector per Ordinance 10019, amending San Diego County Code 64.202(f), since they can transmit human disease through feeding on the mucous membranes and open wounds of humans."
 - c. "Per Ordinance 10019, amending San Diego County Code 64.202(e)(1) and (3), both the farm and the farming activity meet the definition of a public nuisance. Per 64.209(a), The Department of Environmental Health is responsible for ordering the property owner to prevent and abate the nuisance or to remedy the nuisance itself."
2. In the response for finding two, the DEH misleadingly states that eye gnat populations were reduced from an average of 158.4 eye gnats per trap in 2008 to 1.3 in 2010. The DEH fails to state that: the weather data was not analyzed which can have significant impacts on results, the study was not done during the same time of year, or even if those eye gnat numbers were caught per minute, hour, week, or month. In essence the DEH is comparing apple to oranges and the results are not valid.

In this finding, DEH also states that "There is not a good record of complaints made by Jacumba residents in the past but a record of all complaints communicated to Vector Control is being maintained." We asked to include a background paragraph to answer some of our questions including : "How was it done? How is it done now? Why the change? When has the complaint data has been collected? When will it be posted? How does the process work? What has happened so far? What will happen in the future?" None of these questions have been addressed. We want to know why the DEH has not documented the eye gnat issues that we have been complaining about for the last 7 years and ensure that we will not be ignored again in the future.

- DEH states in finding three that "We partially agree with this finding". We asked them to simply state what part of "The County of San Diego has the ability and authority, through existing County regulatory codes, to increase the focus and effectiveness of efforts to control the eye gnat problem." They disagree with. They have not done so in the latest draft of the response.

They also deleted the statement "If the eye gnat problem is not corrected, the County will take action beyond the prevention plan by September 2010." By the removal of this statement I can only assume that DEH will continue to allow non-compliance of the prevention plan and does not plan to follow county regulations.

DEH states that "Eye gnats are endemic to the general area and will always exist at some level in the environment" however they have no proof of any eye gnats being recorded in Jacumba prior to Bornt farming.

DEH deleted the following two statements "Regardless of the significant reductions, the eye gnat population is still a public nuisance", and "Community members pointed out that if the 2008 study numbers were correct, the farm was producing almost 60,000,000 gnats per week during the warmer months of the year. Questions were raised about the study's accuracy by the community. At this time, the study has not been peer reviewed."

DEH removed some the original prevention plan action items that were negotiated down such as 10,000 traps reduced to approximately 2,000, 1,000 feet of trap crop reduced to 100 feet, and a 12 foot barrier wall reduced to nothing.

- In the "Response" to "Recommendation 10-21" DEH deleted the text - "it is within the County's authority to control commercial farming activity that has been documented to artificially increase eye gnat populations. Complaints from Jacumba have demonstrated that the eye gnat vector is also a public nuisance and needs to be abated."

They also cite the Right to Farm Act but omit the statement - "There are exemptions to this act that may be applicable in the case of Jacumba. "

DEH deleted the following paragraph, "The Department of Environmental Health will take appropriate action since a fly problem has developed. For example a Fly Abatement Ordinance was adopted to regulate the breeding of flies from chicken ranches. That ordinance requires ranchers to submit fly abatement plans to the County for review and approval, and establishes a Board that can order abatement actions. Any such ordinance would be applicable only to the unincorporated portion of the County (Jacumba)."

Then inserted statement such as "Voluntary implementation", "education-based", and "traditional approaches" while we continue to suffer from eye gnats and are forced

by DEH to guinea pigs for continued "Research" for a farm that is already non-compliant with the county prevention plan!

DEH deleted "It is within the County's authority to control commercial farming activity that has been documented to artificially increase eye gnat populations. Complaints from Jacumba have demonstrated that the eye gnat vector is also a public nuisance and needs to be abated."

3. In the "Response" to "Recommendation 10-22" the DEH deleted text that requires them to take action, to protect the citizens of Jacumba, and to seek advice from the community. We edited the response to read "*The recommendation requires action and further analysis. Causative agents and remedial actions for eye gnat problems are still being researched however much has already been learned in Jacumba, as well in other county abatement plans. Interim methods to prevent and control breeding of eye gnats will be implemented by the County. The County will use evidence from the 2008 and 2009 studies, advice from eye gnat specialists, comments from the community, and other abatement plans to adopt an ordinance similar to the Fly Abatement Ordinance before September 2010. Part of that consideration would be notification of residents affected by an eye gnat infestation.*"
4. In Recommendation 10-23, the Grand Jury incorrectly identified the Department of Agriculture, Weights, and Measures as the agency to "Control and correct any source of vector harborage or breeding impacting the community at large." We had edited the text to simply state that "This recommendation will not be implemented by Agricultural, Weights and Measures, it will be implemented by the Department of Environmental Health." DEH simply states "This recommendation will not be implemented" and "Will consider implementing regulatory measures to control and correct eye gnat breeding" I believe this statement is indicative of the DEH's attitude to try and sweep this issue under the rug.

In summary,

Per San Diego County Code (SDCC) section 64.203(a), (b), and (c) the Department of Environmental Health will monitor, prevent, and abate all vectors, including eye gnats.

SDCC 64.202(e)(1) and (3), state that both the farm and the farming activity meet the definition of a public nuisance.

SDCC 64.209(a), The Department of Environmental Health is responsible for ordering the property owner to prevent and abate the nuisance or to remedy the nuisance itself.

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Experiencing cuts due to the economic times, Jacumba Library is in need of volunteers. Call or stop by the library, to see if you can be of assistance.

REMINDERS:

All complaints about Eye Gnats should be directed to Kerry McNeill, Vector Control, @ 858-694-2629, kerry.mcneill@sdcounty.ca.gov or e-mail vector@sdcounty.ca.gov. Please call as often as Eye Gnats are a problem. This is very important. If the calls stop coming in, they think there is no more problem.

Clover Flat is accepting donations of instruments, which can be used in the music program.

BOULEVARD FIRE DEPARTMENT breakfasts have been moved to the second Saturday of each month, 8 a.m. until noon. If you would like to volunteer to be a part of the "Cook Shack Volunteers," they are in need of servers and people to set up, as well as getting the coffee and juice ready. Contact Sandy 766-0066 or Frankie 766-9105.

Information regarding BAD and the Campo Landfill can be found at www.backcountryagainstdumps.org, or contact Donna Tisdale at donnatisdale@hughes.net.

SUNDAY at the ring the July and fast will Sunday Day. Think ig some of breakfasts eptember. washers, waiters & ll needed. 66- 4279. age and to you. N WILL hroughout

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Eye gnats still a big problem in Jacumba

By TONY NEFF

The long awaited meeting between Supervisor Jacob and the town of Jacumba took place July 7th on the topic of the eye gnats produced by Bornt Farms. Bornt Farms is an organic vegetable producer and the U. S. Department of Agriculture has determined that the method of farming done there is responsible for the eye gnat infestation in Jacumba. The Department of Environmental Health had created a vector control plan for the farm and it was to be in compliance by July 1st. The farm had begun the outlined plan to abate the eye gnats but as of July 1st crops were still in the ground. A fallow period from July through August was to be observed at the farm and treatment crops at the edges of the farm were to be in place by the July date as well. Bornt Farms was not in compliance as of July 1st, and the crowd present at the meeting with Supervisor Jacob was disappointed because it appears there is a lack of leadership from the top down. The control crops along the edge of the farm are not in place and the amount of traps according to the county officials are insufficient to capture the escaping eye gnats. Residents as far away as a mile from the farm complain about the eye gnats. The local population of Jacumba is still suffering from the millions of eye gnats that are bred in the

moist soil at the farm.

When asked how many traps the town of Jacumba had in place to trap the pests the response was 11. The farm is said to have 2,000 traps but officials stated it would take ten times that many to capture all the eye gnats born in the moist soil. What is wrong with this picture? Residents stated at the meeting "Bornt Farms contributes nothing to the community, except eye gnats." There are no locals working for Bornt, he does not contribute produce to the local people or organizations; you can't even buy the stuff they grow.

The farming is a 24 hour a day operation; it creates blowing dust, and the eye gnat population. The citizens of Jacumba are mad as hell. The children at the local school nearly a mile away cannot play outside or eat lunch because of the eye gnats. Local residents wear full face coverings just to go outside. The county Grand Jury made recommendations and even they have not been followed. Even the very capable Supervisor Jacob who I have seen move mountains was at odds with the county environmental guys about the fallow period. In the real world the July 1st fallow period means July 1st not when the last crops come in, Bornt Farms stated it would be several more weeks. I asked the powers that

be "to help the people of Jacumba." These are third world living conditions and a very unhealthy quality of life for Jacumba residents and visitors.

Does the County Grand Jury or the Department of Environmental Health have any power? Do they just make recommendations that can be ignored? Whoever is in charge needs to spend a half hour outside in Jacumba any day at any time to witness the problem first hand. I bet if this problem occurred in La Jolla or downtown San Diego, Bornt Farms would be a memory. This is a leadership moment; unhealthful conditions are real, the people of Jacumba are overwhelmed with this situation and have looked for help, as of today they haven't gotten any!

I traveled through Jacumba on July 15th and all the crops were out of the field. As a rule I am as pro business as they come but I also understand what it takes to be a good neighbor. Mr. Bornt, please take a look at what has happened since you began farming, follow the recommendations and help alleviate the gnats at your farm. Grow the treatment crops at the edges of the farm as was specified in the Grand Jury guidelines. The citizens of Jacumba need for you to become a better neighbor and solve this problem of your making!